

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAS SUPPLY, INC., a Florida corporation,

Plaintiff,

v.

RADIANT CUSTOMS SERVICES, INC., a
New York corporation, RADIANT
GLOBAL LOGISTICS, INC., a Washington
corporation,

Defendants.

NO.

**PLAINTIFF JAS SUPPLY, INC.'S
COMPLAINT FOR DAMAGES**

Plaintiff JAS SUPPLY, INC., by and through its attorneys, Gordon Rees Scully
Mansukhani, LLP, bring this Complaint against Defendants, RADIANT CUSTOMS
SERVICES, INC. and RADIANT GLOBAL LOGISTICS, INC., and alleges the following:

I. NATURE OF ACTION

1. Plaintiff JAS SUPPLY, INC. ("JAS Supply"), entered into a contract with
Defendants RADIANT GLOBAL LOGISTICS, INC. ("Radiant Global") and/or RADIANT
CUSTOMS SERVICES, INC. ("Radiant Customs") (collectively "Radiant") for Radiant to
provide customs broker services to JAS Supply for the import of 19 containers of alcohol wipes

COMPLAINT FOR DAMAGES - 1

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1 for use as personal protective equipment in combatting the spread of COVID-19. JAS Supply's
2 claims surround Radiant's handling of the final four containers of alcohol wipes, which were
3 detained by the Food and Drug Administration ("FDA") on September 24, 2020, as a result of
4 the acts and omissions of Radiant. Radiant, which owed a fiduciary duty to JAS Supply,
5 provided the FDA with incorrect information, resulting in detention of the product, and not only
6 failed correct its error or timely appeal the FDA's action, it failed to even notify JAS Supply of
7 its errors and resulting issues which directly impacted JAS Supply for several months.
8 Ultimately, the FDA denied importation of the four containers of alcohol wipes, and required
9 JAS Supply to return the product to its original port of entry for destruction or exportation.
10 Radiant's actions and inactions have resulted in damages to JAS Supply in excess of \$700,000.
11

12 **II. PARTIES**

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14 2. Plaintiff JAS Supply is a Florida corporation, organized and operating under the
15 laws of the State of Florida, with its principal place of business at 292 Alternate 19 North, Palm
16 Harbor, FL 34683.

17 3. Defendant Radiant Customs is a New York corporation, organized and operating
18 under the laws of the State of New York, with its principal place of business at 182-09 149th
19 Road, Jamaica, NY 11413.

20 4. Defendant Radiant Global is a Washington corporation, organized and operating
21 under the laws of the State of Washington, with its principal place of business at 405 114th
22 Avenue SE, Third Floor, Bellevue, WA 98004.

23 **III. JURISDICTION AND VENUE**

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25 5. This Court has jurisdiction over this Complaint pursuant to 28 U.S.C. § 1332(a)(1)
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1 because complete diversity of citizenship exists among the PARTIES, and the amount in
2 controversy exceeds \$75,000, exclusive of interest and costs, in damages.

3 6. Venue is proper in this Court pursuant to 28 U.S.C. 1391(b)(3), because JAS
4 Supply and Radiant are subject to this Court's personal jurisdiction. On or about May 15, 2020,
5 JAS Supply executed Radiant's Customs Power of Attorney / Designation of Forwarding Agent
6 ("POA") and Radiant's Terms & Conditions. Section 22 of the Terms & Conditions relates to
7 governing law and consent to jurisdiction and venue, and states in relevant part that the terms
8 and conditions of service and the relationship between the parties shall be construed according
9 to the laws of the State of Washington. Section 22(a) states the parties "irrevocably consent to
10 the jurisdiction of the United States District Court at King County, Washington ..."
11 Accordingly, venue is proper in this Court.
12

13 IV. FACTS

14 7. JAS Supply is a minority vendor established in 2001, specializing in the
15 distribution of food products into the correctional channel. Over the past 20 years, JAS Supply
16 has utilized its vendor relationships to develop and employ operational efficiencies to its
17 customers through procurement, programming negotiations, storage, and inventory distribution
18 and equipment management.
19

20 8. In early 2020, as the COVID-19 pandemic was quickly spreading across the
21 United States and the globe, JAS Supply determined it was essential to help provide badly
22 needed personal protective equipment to consumers and other entities in the United States. JAS
23 Supply used its vendor relationships to design, manufacture, and import products from China.
24

25 9. In order to import the subject alcohol wipe containers, JAS Supply required the
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1 assistance of a customs broker familiar with the legal requirements of importation to the United
2 States, including, but not limited to, following import guidelines, tariffs, security, and
3 governmental regulatory requirements.

4
5 10. Radiant holds itself out as an expert in importation services, stating on its website
6 it “ensures that your cargo moves quickly and efficiently through [Customs and Border Patrol]
7 & throughout the various customs clearance processes.” Radiant’s website goes on to state “Our
8 specialty is the clearance of Time and Trade Sensitive Goods, and those of a perishable nature.”

9
10 11. JAS Supply connected with Radiant through a mutual business contact and, on
11 May 15, 2020, received via email a four-page Power of Attorney (“POA”) to complete and sign
12 to get JAS Supply “setup to import.” JAS Supply executed the POA the same day and returned
13 it to the contact, who in turn supplied it to Radiant.

14
15 12. On May 19, 2020, after the POA was signed and received, JAS Supply
16 participated in a call with Radiant’s International Operations Manager to discuss JAS Supply’s
17 import needs and the necessary documents, other than the POA, required by Radiant to deliver
18 and clear customs. Following the meeting, Radiant provided JAS Supply a customer onboard
19 packet containing a form cover letter with embedded links to the POA (already completed by
20 JAS Supply), a CBP Form 5106, and a Known Importer Questionnaire. The cover letter stated
21 the documents had to be completed prior to the arrival of the first shipment.

22
23 13. JAS Supply provided all information and documentation requested by Radiant to
24 import the alcohol wipe containers. No other contractual documents subsequent to the POA
25 were presented by Radiant for signature or executed by JAS Supply.

26
14. Radiant acted as JAS Supply’s agent in a fiduciary capacity pursuant to Section 2

1 of the POA Terms & Conditions, which states:

2 [Radiant] acts as the “agent” of [JAS Supply] for the purpose of performing
3 duties in connection with importer security filing services, the entry and
4 release of goods, post entry services, the securing of export licenses, the
5 filing of export documentation on behalf of [JAS Supply] and other dealings
with Government Agencies: as to all other services, [Radiant] acts as an
independent contractor.

6 15. Section 9 of the POA Terms & Conditions relates to attempted “Limitation of
7 Liability” in favor of Radiant. Subsection (f) purports to limit Radiant’s liability for “damages
8 attributable to circumstances of Force Majeure.” “Force Majeure” is defined to include, among
9 other things, confiscation or seizure by any government or other public authority, and any other
10 causes that are not reasonably within the control of Radiant “and that could not have been
11 overcome by the exercise of ordinary diligence.”
12

13 16. Section 9(f) of the POA Terms & Conditions also states “Company shall notify
14 [JAS Supply] with reasonable promptness of the existence of any such Force Majeure and the
15 probable duration thereof, and shall provide [JAS Supply] from time to time with correct
16 information concerning the same.”
17

18 17. The original entry documentation for the subject shipment of four containers of
19 alcohol wipes had been uploaded to the FDA’s Import Trade Auxiliary Communications System
20 (ITACS) on September 1, 2020. The entry in question was subsequently entered on September
21 23, 2020.

22 18. The following day, on September 24, 2020, unbeknownst to JAS Supply, the four
23 containers of alcohol wipes were detained by the FDA, purportedly because the product
24 manufacturer did not register with the FDA or list the wipes as a drug, as required by Section
25 510(j) of the Food Drug & Cosmetics Act (“FD&C Act”).
26

1 19. This was not the first time Radiant had been informed of this same issue related
2 to the same JAS Supply product. Just weeks earlier, on September 4, 2020, another entry was
3 detained because neither JAS Supply nor the product manufacturer had been registered with the
4 FDA. In response, Radiant notified JAS Supply of the issue, and JAS Supply provided Radiant
5 with the requested documentation on September 8, 2020. The same day, Radiant, in turn,
6 provided the information to the FDA, and the FDA released the detained goods.
7

8 20. On September 25, 2020, Radiant received a Notice of FDA Action – Hold
9 Designated for the subject four containers of alcohol wipes. In response, Radiant not only did
10 not inform JAS Supply, but it failed to provide the requested documentation, instead electing to
11 upload the same deficient documentation it originally provided on September 1, 2020.
12

13 21. When the product was not released the same day, or the next, or in the weeks and
14 months that followed, Radiant never informed JAS Supply of the issue, and never followed up
15 with the FDA to confirm it received the required documentation.

16 22. In fact, JAS Supply's first notice that anything was wrong with the subject
17 shipment of four containers of alcohol wipes was more than three months later via a December
18 30, 2020, Notice of FDA Action – Refusal of Admission, requiring JAS Supply to return the
19 products to New Orleans for exportation or destruction.
20

21 23. While Radiant appealed the decision, months later by letter dated March 23, 2021,
22 the FDA declined to rescind the refusal. In its written decision, the FDA pointed out that per
23 Section 801(a) of the FD&C, an importer has the right to introduce testimony in support of
24 admissibility of the article, typically for a period of 10 days from the date of the Notice of FDA
25 Action – Detained. In this case, the relevant Notice was issued to Radiant on September 25,
26

1 2020, and the hearing period would have expired on October 15, 2020. However, entry of the
2 subject shipment was not actually refused until December 29, 2020 – meaning Radiant had
3 approximately 50 business days to provide testimony/evidence beyond the concluded statutory
4 hearing period date.

5
6 24. Despite weeks of additional time, and despite its knowledge of FDA practice to
7 release detained products within hours of receiving requested information, Radiant failed to
8 inform JAS Supply of the issue and failed to follow up with the FDA to confirm whether it had
9 received the information necessary to release the subject shipment.

10 25. As a result of Radiant’s failures, JAS Supply was left with absolutely no recourse
11 regarding the subject shipment of four containers of alcohol wipes. In lieu of destroying
12 perfectly good alcohol wipes in the midst of a global pandemic, and in an effort to mitigate its
13 damages, JAS Supply has been working toward exporting and donating the product. However,
14 the FDA requires it be returned to New Orleans from its current location at the Dallas/Fort Worth
15 Airport. Between the cost of the product itself, and transportation costs associated with shipping
16 the product to Louisiana, JAS Supply has suffered damages well in excess of \$700,000.

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18 **V. FIRST CAUSE OF ACTION – BREACH OF CONTRACT**

19 26. JAS Supply repeats, re-alleges, and incorporates all of the allegations set forth in
20 paragraphs 1-25 as though fully set forth herein.

21
22 27. On or about May 15, 2020, JAS Supply entered into a contractual agreement, the
23 POA and Radiant’s Terms & Conditions, with Radiant. The POA and Radiant’s Terms &
24 Conditions were supported by valuable consideration.

25 28. JAS Supply fully performed its obligations under the POA and Radiant’s Terms
26

1 & Conditions, save for any performance for which JAS Supply has been excused by the actions
2 and/or inactions of Radiant.

3 29. Radiant has materially breached the terms of the POA and Radiant's Terms &
4 Conditions by:

- 5 a) Failing to notify JAS Supply, with reasonable promptness or at all, of the
6 September 25, 2020, Notice of FDA Action – Hold Designated of the
7 subject four containers of alcohol wipes;
8
9 b) Failing to provide JAS Supply, from time to time or at all, with correct
10 information concerning the FDA detention of the subject four containers
11 of alcohol wipes;
12
13 c) Failing to exercise ordinary diligence to ensure it provided the FDA with
14 the requested and necessary documentation and/or materials to release the
15 detained subject four containers of alcohol wipes; and
16
17 d) Failing to provide the FDA with the requested and necessary
18 documentation and/or materials during the statutory hearing period, as
19 provided in the FD&C Act and the September 25, 2020, Notice of FDA
20 Action – Hold Designated of the subject four containers of alcohol wipes,
21 or at any point thereafter.

22 30. Radiant's material breach of the POA and Radiant's Terms & Conditions is not
23 excused under the law or under the POA and Radiant's Terms & Conditions.

24 31. As a direct result of Radiant's material breach of the POA and Radiant's Terms &
25 Conditions, JAS Supply has suffered damages in an amount to be proven at trial, but in excess
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1 of \$75,000, the jurisdictional limit of the Court.

2 **VI. SECOND CAUSE OF ACTION – BREACH OF FIDUCIARY DUTY**

3 32. JAS Supply repeats, re-alleges, and incorporates all of the allegations set forth in
4 paragraphs 1-31 as though fully set forth herein.

5 33. Pursuant to Section 2 of the POA and Radiant's Terms & Conditions, Radiant
6 served as JAS Supply's agent in connection with importer security filing services, the entry and
7 release of goods, post entry services, and other dealings with Government Agencies.

8 34. Under Washington law, a fiduciary relationship arises at law when the nature of
9 the relationship between the parties is historically considered fiduciary in character – which
10 explicitly includes the principal and agent relationship.

11 35. A fiduciary relationship arises in fact, under Washington law, when there is
12 something in the particular circumstances which approximates a business agency or professional
13 relationship, something which itself impels or induces the trusting party to relax the care and
14 vigilance which he otherwise should, and ordinarily would, exercise.

15 36. Radiant owed JAS Supply a fiduciary duty not only based upon the explicit
16 contractual duty contained in Section 2 of the POA and Radiant's Terms & Conditions, but also
17 at law under the agent/principal relationship, and in fact based upon the particular circumstances
18 and relationship between Radiant and JAS Supply.

19 37. An agent has not only a duty to act in its principal's best interest, but also a duty
20 to report information it receives affecting the principal's interests.

21 38. Radiant breached its fiduciary duty to JAS Supply by failing to act in JAS
22 Supply's best interest and/or report information affecting JAS Supply's interests in response to
23

1 the September 25, 2020, Notice of FDA Action – Hold Designated of the subject four containers
2 of alcohol wipes.

3 39. As a direct result of Radiant’s breach of fiduciary duty, JAS Supply has suffered
4 damages in an amount to be proven at trial, but in excess of \$75,000, the jurisdictional limit of
5 the Court.
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7 **VII. THIRD CAUSE OF ACTION – NEGLIGENCE**

8 40. JAS Supply repeats, re-alleges, and incorporates all of the allegations set forth in
9 paragraphs 1-39 as though fully set forth herein.

10 41. Radiant owed a duty to exercise reasonable care toward JAS Supply in providing
11 customs broker and importation services.

12 42. Radiant breached its duty to JAS Supply by, among other things, failing to notify
13 JAS Supply regarding the September 25, 2020, Notice of FDA Action – Hold Designated of the
14 subject four containers of alcohol wipes, and/or failing to provide the FDA with the requested
15 and necessary documentation and/or materials to release the detained products.
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17 43. As a direct result of Radiant’s breach of its duty of reasonable care, JAS Supply
18 has suffered damages in an amount to be proven at trial, but in excess of \$75,000, the
19 jurisdictional limit of the Court.
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21 **VIII. PRAYER FOR RELIEF**

22 WHEREFORE, having set forth the above facts and having alleged the above causes of
23 action, Plaintiff JAS SUPPLY, INC. prays for the following:
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1 A. Judgment against RADIANT CUSTOMS SERVICES, INC. and/or RADIANT
2 GLOBAL LOGISTICS, INC. for an amount not yet fully ascertained, but in excess of
3 \$75,000, the jurisdictional limit of the Court, to be proven at trial;

4 B. For an award of attorneys' fees, expenses, and costs pursuant to Section 20 of
5 the POA and Terms & Conditions, RCW 4.84.330, and in equity; and
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7 C. That JAS SUPPLY, INC. receive such other further relief as the Court deems
8 just and equitable.

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11 Dated: July 29, 2021

GORDON REES SCULLY MANSUKHANI,
LLP

12
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